

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

REC'D DEC - 5 2008

United States District Court		District NORTHERN IOWA
Name (under which you were convicted): COREY LIDELL WOODARD		Docket or Case No.: CR 07-1014
Place of Confinement: FCI SANDSTONE, MINNESOTA		Prisoner No.: 10071-029
UNITED STATES OF AMERICA		Movant (include name under which you were convicted) COREY LIDELL WOODARD
v.		

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA
DUBUQUE DIVISION

- (b) Criminal docket or case number (if you know): CR 07-1014

2. (a) Date of the judgment of conviction (if you know): 1-3-08

- (b) Date of sentencing: 5-8-08

3. Length of sentence: 135 months

4. Nature of crime (all counts): DISTRIBUTION IN OR NEAR SCHOOLS OF A CONTROLLED
SUBSTANCE CT.II 2.) FAILURE TO APPEAR CT. V

5. (a) What was your plea? (Check one)
 (1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐
 (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? PLED GUILTY TO COUNTS II AND V, AND ALL REMAINING COUNTS WERE DISMISSED

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐
 N/A

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☐ No ☒
9. If you did appeal, answer the following:

(a) Name of court: N/A

(b) Docket or case number (if you know): N/A

(c) Result: N/A

(d) Date of result (if you know): N/A

(e) Citation to the case (if you know): N/A

(f) Grounds raised: N/A

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

(5) Grounds raised: N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result: N/A

(8) Date of result (if you know): N/A

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐ N/A

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application? N/A

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: N/A

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: THE COURT ERRED IN DOUBLING THE MANDATORY MINIMUM PURSUANT TO § 841(a)(1)(b)(1)(B) FOR A 'FIRST' § 860 OFFENSE WHICH ONLY INCREASES THE §841 MAXIMUM

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
The petitioner contends that the § 841 is a lesser offense of the §860 offense and the statutory language of § 860 only authorizes the court to double the statutory maximum pursuant to § 841 for a 'first offense without regard to the § 851 enhancement allowed under 841. § 860 has its own increased punishment for a 'second offense.' For example, the court doubled the mandatory 5 years to a mandatory 10 first, but did not double the maximum to Life, because § 860 does not allow such; therefore, the prior conviction can only be used for Criminal History being that it is not mentioned in § 860 and can't be used to increase the mandatory minimum under § 841(b)(1)(B), but not the maximum, which would be Life. § 860 only increases the 40 year maximum to 80 years.

(b) Direct Appeal of Ground One: *This results in cumulative punishment such as an § 848 and § 846 convictions, one must be vacated.

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐ N/A

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

GROUND TWO: INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO CORRECTLY INTERPRET THE STATUTORY LANGUAGE AND INFORM THE DEFENDANT OF THE NATURE AND CONSEQUENCES OF THE CHARGES AND THE STATUTORY PENALTIES.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The defense counsel failed to properly inform the defendant of the correct statutory penalties applicable based upon the charging statute and counsel failed to understand the statute and/or law prior to entry of the plea and at sentencing, which allowed the petitioner to receive a higher sentence than he should have received.

The petitioner as a result of the counsel's ineffectiveness does not wish to withdraw his plea, but wishes to be resentenced without the

S. 851 enhancement.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐ N/A

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐ N/A

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

GROUND THREE: THE DEFENSE COUNSEL FAILED TO FILE A DIRECT-APPEAL AS REQUESTED AFTER SENTENCING

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The petitioner requested that the defense counsel appeal the
'sentence' based upon the fact that he did not 'distribute/transfer'
or intend to do so within a 1,000 ft. of a school or playground
in addition to not agreeing with the length of the sentence.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue? N/A

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? N/A

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state: N/A

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application? N/A

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application? N/A

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? N/A

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

GROUND FOUR: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
N/A

(e) On appeal: N/A

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: N/A

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Jill Ableidinger Federal Public Defender

(b) At arraignment and plea: Jill Ableidinger, FPD

(c) At trial: N/A

(d) At sentencing: Jonathan Hammond, Esq. 401 Old Marion Road NE, P.O. BOX 10020, Cedar Rapids, IA 52410-0020

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.* _____ N/A _____

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:
A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: VACATUR OF THE § 841 CONVICTION AND RESENTENCING PURSUANT TO § 860 ALONE RESULTING IN A 5 YEAR MANDATORY MINIMUM IN ADDITION TO THE 1 YEAR TERM FOR FAILURE TO APPEAR or any other relief to which movant may be entitled.

Cory Woodard N/A
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion Under 28 U.S.C. § 2255 was placed in the prison mailing system on 01 December 2008 (month, date, year).

Executed (signed) on 01 Dec. 2008 (date).

Cory Woodard PRO SE
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion. N/A

MR, Corey L Idell Woodward
10071-029 I-unit

FEDERAL CORRECTIONAL INSTITUTION

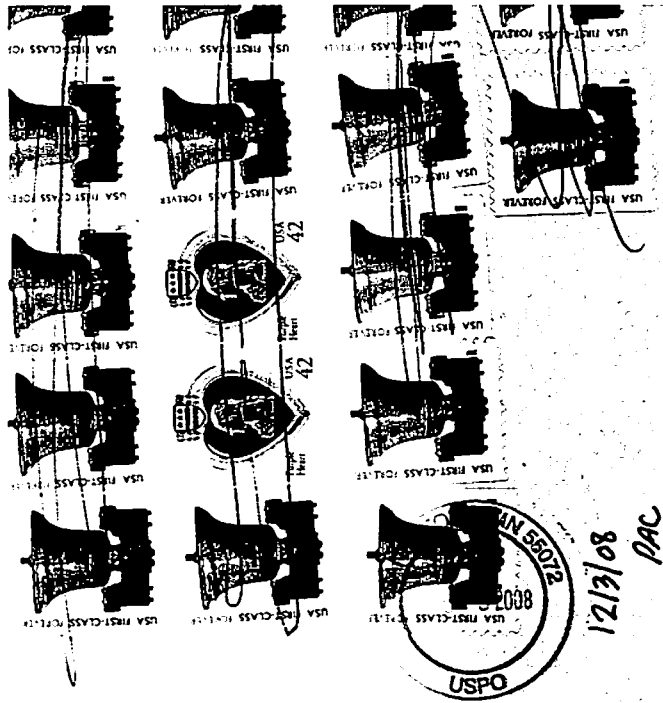
PO Box 1000

SANDSTONE, MN 55072

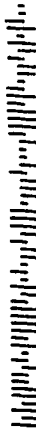
7545 9505 0000 0980 2002



LEGAL MAIL



CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA
4200 C STREET, SW
CEDAR RAPIDS, IA 52404





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